Permitting one to profit by his invention indefinitely by delaying filing until he learned another independently had made the same invention would lead inventors to chance secrecy for long periods and tend toward the very mischief sought to be prevented. Therefore, the inventor was encouraged to file promptly and limitations were placed on the time within which a valid application could be made after a prior public use or a description in a printed publication. It mattered not whether the printed description was made by the inventor or others. The inventor still was required to file before the deadline. But the description had to be an *enabling* one, else it would be no contribution to the public store of *useful* knowledge. The limitation as to a prior description is incorporated into Sect. 102(b).

VI. The Problems Posed by the Inherent Differences in Plants and Man Made Articles.

If a variety becomes extinct, a duplicate cannot be fashioned. The developer may disclose the ancestry and steps taken to obtain the variety and fully disclose its characteristics. Others can make an infinite number of crossings of the ancestors, but not one of them can recreate the variety. It has never been done. A plant by nature is different from man made res.

Articles can be created by man himself. Prior written descriptions can be such as to enable others to reproduce them. The public should be protected in the right to make use of information long before published, without danger of molestation under patents resulting from applications filed long after the publication. Otherwise, the utmost confusion would arise.

The description of a plant in a plant patent or in a printed publication at best can only recite, as historical

EXHIBIT A

facts, that at one time a certain plant existed, was discovered in a certain manner, and was asexually reproduced. This information may be interesting history, but cannot enable others to reproduce the plant. Therefore, no matter the age of the publication, it cannot take from the public that which had long before been invented and, by publication, placed in public domain. Prior public use and sale of a plant are the avenues by which a plant enters the public domain.

Refusal of a plant patent on the grounds of the prior publication induces the developer to forego marketing the plant. He reasons that because a patent is barred by the publication, others can obtain and asexually reproduce the plant without obligation to him. It is to his personal benefit, therefore, to substitute in the market another plant on which he can obtain protection, even though the substitute be inferior.

Thus, in article patents, the basis is valid because the publication itself enables the public to produce the res at any time and the public should not be deprived of rights to that which has long been in the public domain.

A plant patent if granted on an application filed years later than a published printed description does not monopolize anything which formerly was in the public domain.

In the case of plant patents, therefore, the basis is illogical and invalid because it inures to the disadvantage of the public, by inducing the developer to forever deprive the public of the choice variety described. It contravenes entirely the intent of the patent laws.

In the case of an article, deliberate introduction of an inferior article could well inform the public sufficiently so that others could produce a specimen as desirable as the choice specimen the applicant would have preferred to have introduced could he have obtained a patent thereon.

EXHIBIT A

KLARQUIST SPARKMAN, LLP
INTELLECTUAL PROPERTY LAW

One World Trade Center
121 S.W. Salmon Street, 16th Floor
Portland, OR 97204-2988 U.S.A.

Address Service Requested

BOX NON-FEE AMENDMENT
COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231